

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID CAPLAN,  
Plaintiff,  
v.  
CNA SHORT TERM DISABILITY PLAN; CNA  
LONG TERM DISABILITY PLAN; and  
HARTFORD LIFE GROUP INSURANCE  
COMPANY,  
Defendants.

No. C06-05865 CW

ORDER DENYING  
DEFENDANT HARTFORD'S  
MOTION TO DISMISS  
PLAINTIFF'S SECOND  
CLAIM FOR EQUITABLE  
RELIEF

Defendant Hartford Life Group Insurance Company (Hartford) moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the second claim in Plaintiff's first amended complaint.<sup>1</sup> Plaintiff's second claim is for injunctive or other equitable relief against Defendant Hartford pursuant to 29 U.S.C. § 1132(a)(3). Plaintiff opposes the motion. The matter was decided on the papers. Having considered all of the papers filed by the parties on the motion, the Court DENIES the motion to dismiss.

<sup>1</sup> Because the other Defendants are not sued by Plaintiff in his second cause of action, they are not parties to this motion.

## BACKGROUND

Plaintiff David Caplan alleges that he was a participant in both the CNA Short Term Disability (STD) Plan and the CNA Long Term Disability (LTD) Plan (the Plans) which offered benefits to employees of CNA, including Plaintiff. The Plans provided benefits through an insurance policy issued by Continental Assurance Company which was administered by Hartford.

Plaintiff alleges that he filed for short-term disability benefits and Hartford denied his claim. He alleges that his attorney requested review of Hartford's decision and submitted a claim for long-term disability benefits.

Plaintiff alleges that Hartford informed him that it would refer his request for review to University Disability Consortium (UDC) for a comprehensive medical review of his claim. He alleges that UDC has a financial conflict of interest because it relies heavily on Hartford for financial gain and therefore was not a neutral evaluator of his claim. Plaintiff alleges that he requested that Hartford obtain a medical review from a more neutral party, but that Hartford stayed with UDC which upheld its decision to deny Plaintiff's claim for short-term disability benefits, and therefore also denied his claim for long-term disability benefits.

Plaintiff brings two causes of action under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461. In the first cause of action against the Plans, Plaintiff seeks recovery of his plan benefits under 29 U.S.C. § 1132(a)(1)(B). Plaintiff prays that the Court grant the following relief as to his first cause of action:

1 A. Declare that Defendant STD Plan violated the terms of  
2 the STD Plan by denying Mr. Caplan's claims for  
short-term disability benefits;

3 B. Order Defendant STD Plan to pay short-term disability  
4 benefits to Plaintiff pursuant to the terms of the STD  
Plan from March 7, 2005, through August 28, 2005,  
5 together with prejudgment interest on each and every such  
monthly payment through the date judgment is entered  
herein;

6 C. Declare that Defendant LTD Plan violated the terms of  
the LTD Plan by denying Mr. Caplan's claims for long-term  
disability benefits;

7 D. Order Defendant LTD Plan to pay long-term disability  
8 benefits to Plaintiff pursuant to the terms of the LTD  
Plan from August 29, 2005, through the date judgment is  
9 entered herein, together with prejudgment interest on  
each and every such monthly payment through the date  
judgment is entered herein;

10 E. Declare Plaintiff's right to continuing medical,  
dental and vision benefits pursuant to the terms of the  
11 Plans from March 7, 2005, through the date judgment is  
entered herein;

12 F. Declare Plaintiff's right to receive future long-term  
disability benefit payments under the terms of the LTD  
13 Plan;

14 G. Declare Plaintiff's right to receive future medical,  
dental and vision benefits under the terms of the Plans;

15 H. Award Plaintiff reasonable attorneys' fees and costs  
of suit incurred herein pursuant to ERISA § 502(g), 29  
U.S.C. § 1132(g);

16 I. Provide such other relief as the Court deems equitable  
and just.

17  
18 In the second cause of action against Hartford, Plaintiff  
19 seeks injunctive or other equitable relief under 29 U.S.C.  
20 § 1132(a)(3). Plaintiff alleges that Hartford's reliance on UDC as  
21 a medical records reviewer constituted a failure to provide a full  
22 and fair review of the denial of his claim, and a breach of the  
23 ERISA-imposed fiduciary duty. Plaintiff prays that the Court grant  
the following relief as to his second cause of action:

24 A. Declare that Defendant Hartford's use of UDC as  
25 medical records reviewer constituted a breach of  
fiduciary duty to the Plans and to Mr. Caplan;

26 B. Enjoin Defendant Hartford from utilizing UDC as a  
medical record reviewer for a period of five years;

27 C. Remove Defendant Hartford as Plan Fiduciary of the  
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1 Plans for a period of five years;  
2 D. Appoint an Independent Fiduciary as Plan Fiduciary of  
the Plans to replace Defendant Hartford for a period of  
3 five years;  
4 E. Award Plaintiff reasonable attorneys' fees and costs  
of suit incurred herein pursuant to ERISA § 502(g), 29  
U.S.C. § 1132(g);  
5 F. Provide such other relief as the Court deems equitable  
and just.

6 LEGAL STANDARD

7 A motion to dismiss for failure to state a claim will be  
8 denied unless it is "clear that no relief could be granted under  
9 any set of facts that could be proved consistent with the  
10 allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132 (9th  
11 Cir. 2002) (citing Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514  
12 (2002)). All material allegations in the complaint will be taken  
13 as true and construed in the light most favorable to the claimant.  
14 NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).  
15 Furthermore, a motion to dismiss will not be granted merely because  
16 a plaintiff requests a remedy to which he is not entitled. Massey  
17 v. Banning Unified Sch. Dist., 256 F. Supp. 2d 1090, 1092 (C.D.  
18 Cal. 2003).

19 A complaint must contain a "short and plain statement of the  
20 claim showing that the pleader is entitled to relief." Fed. R.  
21 Civ. P. 8(a). "Each averment of a pleading shall be simple,  
22 concise, and direct. No technical forms of pleading or motions are  
23 required." Fed. R. Civ. P. 8(e). These rules "do not require a  
24 claimant to set out in detail the facts upon which he bases his  
25 claim. To the contrary, all the Rules require is 'a short and  
26 plain statement of the claim' that will give the defendant fair  
27 notice of what the plaintiff's claim is and the grounds on which it  
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1 rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

2 DISCUSSION

3 Hartford argues that Plaintiff cannot maintain his claim for  
4 relief under 29 U.S.C. § 1132(a)(3) as a matter of law on the  
5 ground that Plaintiff has adequate relief under 29 U.S.C.  
6 § 1132(a)(1)(B). Hartford further argues that 29 U.S.C.  
7 § 1132(a)(3) does not provide for the equitable relief sought by  
8 Plaintiff.

9 I. Claims Under 29 U.S.C. § 1132(a)

10 Under 29 U.S.C. § 1132(a),

11 a plan participant or beneficiary may sue to recover  
12 benefits due under the plan, to enforce the participant's  
13 rights under the plan, or to clarify rights to future  
14 benefits. Relief may take the form of accrued benefits  
due, a declaratory judgment on entitlement to benefits,  
or an injunction against a plan administrator's improper  
refusal to pay benefits.

15 Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 53 (1987).

16 Title 29 U.S.C. § 1132(a)(1)(B) provides: "A civil action may  
17 be brought - (1) by a participant or beneficiary - . . . (B) to  
18 recover benefits due to him under the terms of his plan, to enforce  
19 his rights under the terms of the plan, or to clarify his rights to  
20 future benefits under the terms of the plan." Title 29 U.S.C.  
21 § 1132(a)(1)(B) provides for relief only for the loss of past and  
22 future benefits. See Mass. Mut. Life Ins. Co. v. Russell, 473 U.S.  
23 134, 144 (1985). Section 1132(a)(1)(B) "says nothing about the  
24 recovery of extracontractual damages." Id. However, in addition  
25 to the recovery of benefits, the statute also allows the plan  
26 participant to bring a civil action "to enforce his rights under  
27 the terms of the plan," without reference to whether the relief

1 sought is legal or equitable. Great-West Life & Annuity Ins. Co.  
2 v. Knudson, 534 U.S. 204, 221 (2002).

3 Law suits under 29 U.S.C. § 1132(a)(1)(B) can be brought  
4 against the plan as an entity and against the plan's  
5 administrators. Ford v. MCI Communs. Corp. Health & Welfare Plan,  
6 399 F.3d 1076, 1081 (9th Cir. 2005). However, a claimant may not  
7 sue the plan's insurer for additional plan benefits. Id.

8 Title 29 U.S.C. § 1132(a)(3) provides:

9 A civil action may be brought - . . . (3) by a  
10 participant, beneficiary, or fiduciary (A) to enjoin any  
11 act or practice which violates any provision of this  
12 title or the terms of the plan, or (B) to obtain other  
appropriate equitable relief (i) to redress such  
violations or (ii) to enforce any provisions of this  
title or the terms of the plan.

13 In Varity Corp. v. Howe, 516 U.S. 489, 515 (1996), the Supreme  
14 Court held that 29 U.S.C. § 1132(a)(3) authorizes ERISA  
15 beneficiaries to bring lawsuits for "'appropriate' equitable  
16 relief" for breach of fiduciary obligations, where ERISA does not  
17 "elsewhere provide[] adequate relief for a beneficiary's injury."  
18 It is expected "that courts, in fashioning 'appropriate' equitable  
19 relief, will keep in mind the special nature and purpose of  
20 employee benefit plans, and will respect the policy choices  
21 reflected in the inclusion of certain remedies and the exclusion of  
22 others." Id. (citations and quotations omitted). Thus, it is  
23 expected "that where Congress elsewhere provided adequate relief  
24 for a beneficiary's injury, there will likely be no need for  
25 further equitable relief, in which case such relief normally would  
26 not be 'appropriate.'" Id.

27 Section 1132(a)(3) is "a 'catchall' provision, which provides  
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1 relief only for injuries that are not otherwise adequately provided  
2 for." Forsythe v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir.  
3 1997) (citing Varity Corp., 516 U.S. at 512). The Ninth Circuit  
4 interpreted Varity Corp. to mean that equitable relief is not  
5 appropriate where another subsection of section 1132(a) provides an  
6 adequate remedy. Forsythe, 114 F.3d at 1475.

7 II. Adequate Remedy Under 29 U.S.C. § 1132(a)

8 Plaintiff's claim for breach of fiduciary duty under 29 U.S.C.  
9 § 1132(a)(3) stems from Hartford's use of UDC as a claim reviewer  
10 when UDC had an alleged conflict of interest. Hartford argues that  
11 Plaintiff cannot maintain his claim for relief under 29 U.S.C.  
12 § 1132(a)(3) as a matter of law because Plaintiff cannot state an  
13 actionable claim under section 1132(a)(3) if he has an adequate  
14 remedy for his injuries under section 1132(a)(1)(B).

15 In Varity, 516 U.S. at 511, the Supreme Court stated that the  
16 "discretionary determination about whether a claimant is entitled  
17 to benefits under the terms of the plan documents" constitutes a  
18 "fiduciary act." Plaintiff alleges that Hartford denied him  
19 benefits under the Plans due to UDC's allegedly biased review of  
20 his medical records. Therefore, Plaintiff has alleged facts  
21 sufficient to state a claim for a breach of fiduciary duty against  
22 Hartford.

23 As noted above, Varity Corp., 516 U.S. at 515, held that  
24 section 1132(a)(3) claims are permitted where the statute does not  
25 "elsewhere provide[] adequate relief for a beneficiary's injury."  
26 Plaintiff has alleged a cognizable claim for benefits under section  
27 1132(a)(1)(B), and if he prevails, he may recover past plan  
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1 benefits and equitable relief that will enable him to enforce his  
2 rights under the Plans. Great-West Life & Annuity Ins. Co., 534  
3 U.S. at 221. Therefore, Hartford is correct that Plaintiff's  
4 section 1132(a)(3) claim must be dismissed to the extent it is  
5 duplicative of the section 1132(a)(1)(B) claim.

6 However, the equitable relief Plaintiff seeks under section  
7 1132(a)(3), including a declaration that Hartford's use of UDC as a  
8 medical records reviewer constituted a breach of fiduciary duty to  
9 him and to the Plans, may be different than the relief available  
10 under section 1132(a)(1)(B), and such relief might not be available  
11 to Plaintiff under the section 1132(a)(1)(B) claim alone.

12 The Court concludes, therefore, that it would be premature to  
13 dismiss Plaintiff's claim under section 1132(a)(3) on the basis  
14 that relief is available under section 1132(a)(1)(B).

15 III. Removal Of Hartford As Claims Administrator And UDC As Medical  
16 Records Reviewer

17 Hartford also argues that 29 U.S.C. § 1132(a)(3) does not  
18 provide for the equitable relief sought by Plaintiff because the  
19 removal of Hartford as the claims administrator and UDC as the  
20 medical reviewer is not available to Plaintiff as a remedy.  
21 Hartford cites Beck v. Levering, 947 F.2d 639 (2nd Cir. 1991) for  
22 the proposition that drastic relief, such as that sought by  
23 Plaintiff, has only been found appropriate in ERISA pension cases  
24 where plan fiduciaries have stolen plan assets or engaged in  
25 egregious self-dealing.

26 Citing Donovan v. Mazzola, 716 F.2d 1226, 1235 (9th Circuit  
27 1983), Plaintiff argues that the court has broad discretion to  
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1 fashion appropriate relief for the breaches he has alleged.  
2 Furthermore, Plaintiff argues that 29 U.S.C. § 1132(a)(3) does  
3 provide for the relief sought.

4 At this early date in the case, the Court will not address the  
5 issue of what equitable relief under 29 U.S.C. § 1132(a)(3) would  
6 be appropriate.

7 CONCLUSION

8 For the foregoing reasons, Hartford's motion to dismiss  
9 Plaintiff's second claim for equitable relief under 29 U.S.C.  
10 § 1132(a)(3) pursuant to Fed. R. Civ. P. 12(b)(6) is DENIED.

11  
12 IT IS SO ORDERED.

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14 Dated: 3/1/07



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CLAUDIA WILKEN  
United States District Judge